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10 **Attorneys for Defendant**
11 **IMPAC FUNDING CORPORATION**

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 **DOMINIC CONCETTI by his Guardian**
15 **Ad Litem, SHARON FRASER,**

16 **Plaintiff,**

17 **v.**

18 **IMPAC FUNDING CORPORATION, a**
19 **California corporation, dba IMPAC;**
20 **UNIVERSAL MORTGAGE AND**
21 **SALES, INC., a California corporation;**
22 **RAYMOND FLORES, an individual;**
23 **and ERIK S. GONZALES, an**
24 **individual,**

25 **Defendants.**

Case No. C07-05410 -JW

ANSWER OF DEFENDANT
IMPAC FUNDING
CORPORATION TO COMPLAINT
OF DOMINIC CONCETTI

26 Defendant IMPAC Funding Corporation ("Defendant"), for itself alone,
27 hereby responds to the Complaint of Plaintiff Dominic Concetti as follows:

28 1. Defendant admits the allegations contained in Paragraph 1 of the
Complaint.

2. Defendant does not have sufficient knowledge or information
concerning the allegations contained in Paragraph 2 of the Complaint, and on that
basis generally and specifically denies each and every allegation contained therein.

3. Defendant admits the allegations contained in Paragraph 3 of the

1 Complaint.

2 4. Defendant admits the allegations contained in Paragraph 4 of the
3 Complaint.

4 5. Defendant admits the allegations contained in Paragraph 5 of the
5 Complaint.

6 6. Defendant admits the allegations contained in Paragraph 6 of the
7 Complaint.

8 7. Defendant admits the allegations contained in Paragraph 7 of the
9 Complaint.

10 8. As to Paragraph 8 of the Complaint, Defendant denies that Defendants
11 Universal Mortgage and Sales, Inc., Raymond Flores and Erik S. Gonzales were
12 agents of Defendant IMPAC Funding Corporation. Defendant admits that
13 Defendants Flores and Gonzales were agents of Defendant Universal Mortgage and
14 Sales, Inc.

15 9. Defendant denies the allegations contained in Paragraph 9 of the
16 Complaint.

17 10. Defendant does not have sufficient knowledge or information
18 concerning the allegations contained in Paragraph 10 of the Complaint, and on that
19 basis generally and specifically denies each and every allegation contained therein.

20 11. Defendant does not have sufficient knowledge or information
21 concerning the allegations contained in Paragraph 11 of the Complaint, and on that
22 basis generally and specifically denies each and every allegation contained therein.

23 12. Defendant admits the allegations contained in Paragraph 12 of the
24 Complaint.

25 13. Defendant admits the allegations contained in Paragraph 13 of the
26 Complaint.

27 14. Defendant admits the allegations contained in Paragraph 14 of the
28 Complaint.

1 15. Defendant admits the allegations contained in Paragraph 15 of the
2 Complaint.

3 16. Defendant does not have sufficient knowledge or information
4 concerning the allegations contained in Paragraph 16 of the Complaint and on that
5 basis generally and specifically denies each and every allegation contained therein.

6 17. Defendant does not have sufficient knowledge or information
7 concerning the allegations contained in Paragraph 17 of the Complaint, and on that
8 basis generally and specifically denies each and every allegation contained therein.

9 18. Defendant does not have sufficient knowledge or information
10 concerning the allegations contained in Paragraph 18 of the Complaint, and on that
11 basis generally and specifically denies each and every allegation contained therein.

12 19. Defendant does not have sufficient knowledge or information
13 concerning the allegations contained in Paragraph 19 of the Complaint, and on that
14 basis generally and specifically denies each and every allegation contained therein.

15 20. Defendant does not have sufficient knowledge or information
16 concerning the allegations contained in Paragraph 20 of the Complaint, and on that
17 basis generally and specifically denies each and every allegation contained therein.

18 21. Defendant does not have sufficient knowledge or information
19 concerning the allegations contained in Paragraph 21 of the Complaint and on that
20 basis generally and specifically denies each and every allegation contained therein.

21 22. Defendant does not have sufficient knowledge or information
22 concerning the allegations contained in Paragraph 22 of the Complaint, and on that
23 basis generally and specifically denies each and every allegation contained therein.

24 23. Defendant does not have sufficient knowledge or information
25 concerning the allegations contained in Paragraph 23 of the Complaint, and on that
26 basis generally and specifically denies each and every allegation contained therein.

27 24. Defendant does not have sufficient knowledge or information
28 concerning the allegations contained in Paragraph 24 of the Complaint, and on that

1 basis generally and specifically denies each and every allegation contained therein.

2 25. Defendant does not have sufficient knowledge or information
3 concerning the allegations contained in Paragraph 25 of the Complaint, and on that
4 basis generally and specifically denies each and every allegation contained therein.

5 26. Defendant does not have sufficient knowledge or information
6 concerning the allegations contained in Paragraph 26 of the Complaint, and on that
7 basis generally and specifically denies each and every allegation contained therein.

8 27. Defendant does not have sufficient knowledge or information
9 concerning the allegations contained in Paragraph 27 of the Complaint, and on that
10 basis generally and specifically denies each and every allegation contained therein.

11 28. Defendant does not have sufficient knowledge or information
12 concerning the allegations contained in Paragraph 28 of the Complaint, and on that
13 basis generally and specifically denies each and every allegation contained therein.

14 29. Defendant denies the allegations contained in Paragraph 29 of the
15 Complaint.

16 30. Defendant denies the allegations contained in Paragraph 30 of the
17 Complaint.

18 31. Defendant denies the allegations contained in Paragraph 31 of the
19 Complaint.

20 32. Defendant denies the allegations contained in Paragraph 32 of the
21 Complaint.

22 33. Defendant denies the allegations contained in Paragraph 33 of the
23 Complaint.

24 34. Defendant denies the allegations contained in Paragraph 34 of the
25 Complaint.

26 35. Defendant denies that it falsely stated any information on the loan
27 application. Defendant does not have sufficient knowledge or information
28 concerning the remaining allegations contained in Paragraph 35 of the Complaint,

1 and on that basis generally and specifically denies each and every such allegation.

2 36. Defendant denies the allegations contained in Paragraph 36 of the
3 Complaint.

4 37. Defendant denies the allegations contained in Paragraph 37 of the
5 Complaint.

6 38. Answering Paragraph 38 of the Complaint, Defendant admits that it
7 initially denied approval of the subject loan. Defendant does not have sufficient
8 knowledge or information concerning the remaining allegations contained in
9 Paragraph 38 of the Complaint, and on that basis generally and specifically denies
10 each and every such allegation.

11 39. Defendant does not have sufficient knowledge or information
12 concerning the allegations contained in Paragraph 39 of the Complaint, and on that
13 basis generally and specifically denies each and every allegation contained therein.

14 40. Defendant does not have sufficient knowledge or information
15 concerning the allegations contained in Paragraph 40 of the Complaint, and on that
16 basis generally and specifically denies each and every allegation contained therein.

17 41. Defendant does not have sufficient knowledge or information
18 concerning the allegations contained in Paragraph 41 of the Complaint, and on that
19 basis generally and specifically denies each and every allegation contained therein.

20 42. Defendant does not have sufficient knowledge or information
21 concerning the allegations contained in Paragraph 42 of the Complaint, and on that
22 basis generally and specifically denies each and every allegation contained therein.

23 43. Defendant does not have sufficient knowledge or information
24 concerning the allegations contained in Paragraph 43 of the Complaint, and on that
25 basis generally and specifically denies each and every allegation contained therein.

26 44. Defendant denies the allegations contained in Paragraph 44 of the
27 Complaint.

28 45. Defendant denies the allegations contained in Paragraph 45 of the

1 Complaint.

2 46. Defendant denies the allegations contained in Paragraph 46 of the
3 Complaint.

4 47. Defendant denies the allegations contained in Paragraph 47 of the
5 Complaint.

6 48. Defendant denies that it acted intentionally, maliciously, wantonly,
7 recklessly or in bad faith as described in the Complaint. Defendant lacks sufficient
8 knowledge or information concerning the allegations contained in Paragraph 48 of
9 the Complaint, as they may apply to Co-defendants, and on that basis generally and
10 specifically denies each and every allegation contained therein.

11 49. Defendant admits the allegations contained in Paragraph 49 of the
12 Complaint.

13 50. Defendant admits the allegations contained in Paragraph 50 of the
14 Complaint.

15 51. Defendant admits the allegations contained in Paragraph 51 of the
16 Complaint.

17 52. Defendant admits the allegations contained in Paragraph 52 of the
18 Complaint.

19 53. Defendant denies the allegations contained in Paragraph 53 of the
20 Complaint.

21 54. Defendant denies the allegations contained in Paragraph 54 of the
22 Complaint.

23 55. Defendant denies the allegations contained in Paragraph 55 of the
24 Complaint.

25 56. Defendant admits the allegations contained in Paragraph 56 of the
26 Complaint.

27 57. Defendant admits the allegations contained in Paragraph 57 of the
28 Complaint as such allegations pertain to itself. Defendant lacks sufficient knowledge

1 or information concerning the allegations as they may apply to Co-Defendants, and
2 on that basis generally and specifically denies each and every allegation contained
3 therein.

4 58. Defendant admits the allegations contained in Paragraph 58 of the
5 Complaint as they apply to itself.

6 59. Defendant denies the allegations contained in Paragraph 59 of the
7 Complaint.

8 60. Defendant denies the allegations contained in Paragraph 60 of the
9 Complaint.

10 61. Defendant denies the allegations contained in Paragraph 61 of the
11 Complaint.

12 62. Defendant denies the allegations contained in Paragraph 62 of the
13 Complaint.

14 63. Defendant denies the allegations contained in Paragraph 63 of the
15 Complaint.

16 64. Defendant admits the allegations contained in Paragraph 64 of the
17 Complaint.

18 65. Defendant does not have sufficient knowledge or information
19 concerning the allegations contained in said Paragraph 65 of the Complaint, and on
20 that basis generally and specifically denies each and every allegation contained
21 therein.

22 66. Defendant does not have sufficient knowledge or information
23 concerning the allegations contained in Paragraph 66 of the Complaint, and on that
24 basis generally and specifically denies each and every allegation contained therein.

25 67. Defendant does not have sufficient knowledge or information
26 concerning the allegations contained in Paragraph 67 of the Complaint, and on that
27 basis generally and specifically denies each and every allegation contained therein.

28 68. Defendant does not have sufficient knowledge or information

1 concerning the allegations contained in Paragraph 68 of the Complaint, and on that
2 basis generally and specifically denies each and every allegation contained therein.

3 69. Defendant does not have sufficient knowledge or information
4 concerning the allegations contained in Paragraph 69 of the Complaint, and on that
5 basis generally and specifically denies each and every allegation contained therein.

6 70. Defendant does not have sufficient knowledge or information
7 concerning the allegations contained in Paragraph 70 of the Complaint, and on that
8 basis generally and specifically denies each and every allegation contained therein.

9 71. Answering Paragraph 71 of the Complaint, Defendant denies that it
10 made any intentional misrepresentations, omissions or concealed any material facts.
11 Defendant further denies that the subject loan was a fraudulent or predatory loan.
12 Defendant lacks sufficient knowledge or information concerning the remaining
13 allegations contained in said paragraph, and on that basis generally and specifically
14 denies each and every such allegation.

15 72. Defendant does not have sufficient knowledge or information
16 concerning the allegations contained in Paragraph 72 of the Complaint, and on that
17 basis generally and specifically denies each and every such allegation.

18 73. Defendant denies the allegations contained in Paragraph 73 of the
19 Complaint.

20 74. Defendant lacks sufficient knowledge or information concerning the
21 allegations contained in Paragraph 74 of the Complaint, and on that basis generally
22 and specifically denies each and every such allegation.

23 75. Defendant admits the allegations contained in Paragraph 75 of the
24 Complaint.

25 76. Defendant admits the allegations contained in Paragraph 76 of the
26 Complaint, with the exception of the allegation regarding breach set forth in the last
27 sentence. Defendant lacks sufficient information or knowledge or information as to
28 such allegation and on that basis generally and specifically denies same.

1 77. Defendant lacks sufficient knowledge or information concerning the
2 allegations contained in Paragraph 77 of the Complaint, and on that basis generally
3 and specifically denies each and every such allegation.

4 78. Defendant lacks sufficient knowledge or information concerning the
5 allegations contained in Paragraph 78 of the Complaint, and on that basis generally
6 and specifically denies each and every such allegation.

7 79. Defendant lacks sufficient knowledge or information concerning the
8 allegations contained in Paragraph 79 of the Complaint, and on that basis generally
9 and specifically denies each and every such allegation.

10 80. Defendant admits the allegations contained in Paragraph 80 of the
11 Complaint.

12 81. Defendant denies the allegations contained in Paragraph 81 of the
13 Complaint as they apply to itself. Defendant lacks sufficient knowledge or
14 information concerning the remaining allegations contained in Paragraph 81, and on
15 that basis generally and specifically denies each and every such allegation.

16 82. Defendant denies the allegations contained in Paragraph 82 of the
17 Complaint as they apply to itself. Defendant lacks sufficient knowledge or
18 information concerning the remaining allegations contained in Paragraph 82, and on
19 that basis generally and specifically denies each and every such allegation.

20 83. Defendant denies the allegations contained in Paragraph 83 of the
21 Complaint.

22 84. Defendant denies the allegations contained in Paragraph 84 of the
23 Complaint.

24 85. Defendant admits the allegations contained in Paragraph 85 of the
25 Complaint.

26 86. Defendant denies the allegations contained in Paragraph 86 of the
27 Complaint as they apply to itself. Defendant lacks sufficient knowledge or
28 information concerning the remaining allegations contained in said paragraph, and

1 on that basis generally and specifically denies each and every such allegation.

2 87. Defendant denies the allegations contained in Paragraph 87 of the
3 Complaint.

4 88. Defendant denies the allegations contained in Paragraph 88 of the
5 Complaint.

6 89. Defendant admits the allegations contained in Paragraph 89 of the
7 Complaint.

8 90. Defendant denies the allegations in Paragraph 90 of the Complaint as
9 they apply to itself. Defendant lacks sufficient knowledge or information to answer
10 the remaining allegations contained in Paragraph 90, and on that basis generally and
11 specifically denies each and every such allegation.

12 91. Defendant denies the allegations in Paragraph 91 of the Complaint as
13 they apply to itself. Defendant lacks sufficient knowledge or information to answer
14 the remaining allegations contained in Paragraph 91, and on that basis generally and
15 specifically denies each and every such allegation.

16 92. Defendant admits the allegations contained in Paragraph 92 of the
17 Complaint.

18 93. Defendant lacks sufficient knowledge or information concerning the
19 allegations contained in Paragraph 93 of the Complaint, and on that basis generally
20 and specifically denies each and every such allegation.

21 94. Defendant denies the allegations contained in Paragraph 94 of the
22 Complaint as they apply to itself. Defendant lacks sufficient knowledge or
23 information concerning the remaining allegations contained in said paragraph, and
24 on that basis generally and specifically denies each and every such allegation.

25 95. Defendant denies the allegations contained in Paragraph 95 of the
26 Complaint as they apply to itself. Defendant lacks sufficient knowledge or
27 information concerning the remaining allegations contained in said paragraph and on
28 that basis generally and specifically denies each and every such allegation.

1 96. Defendant denies the allegations contained in Paragraph 96 of the
2 Complaint as they apply to itself. Defendant lacks sufficient knowledge or
3 information concerning the remaining allegations contained in said paragraph, and
4 on that basis generally and specifically denies each and every such allegation.

5 97. Defendant denies the allegations contained in Paragraph 97 of the
6 Complaint as they apply to itself. Defendant lacks sufficient knowledge or
7 information concerning the remaining allegations contained in said paragraph, and
8 on that basis generally and specifically denies each and every such allegation.

9 98. Defendant denies the allegations contained in Paragraph 98 of the
10 Complaint as they apply to itself. Defendant lacks sufficient knowledge or
11 information concerning the remaining allegations contained in said paragraph, and
12 on that basis generally and specifically denies each and every such allegation.

13 99. Defendant admits the allegations contained in Paragraph 99 of the
14 Complaint.

15 100. Defendant denies the allegations contained in Paragraph 100 of the
16 Complaint as they apply to itself. Defendant lacks sufficient knowledge or
17 information concerning the remaining allegations contained in said paragraph, and
18 on that basis generally and specifically denies each and every such allegation.

19 101. Defendant denies the allegations contained in Paragraph 101 of the
20 Complaint as they apply to itself. Defendant lacks sufficient knowledge or
21 information concerning the remaining allegations contained in said paragraph, and
22 on that basis generally and specifically denies each and every such allegation.

23 102. Defendant denies the allegations contained in Paragraph 102 of the
24 Complaint as they apply to itself. Defendant lacks sufficient knowledge or
25 information concerning the remaining allegations contained in said paragraph, and
26 on that basis generally and specifically denies each and every such allegation.

27 103. Defendant denies the allegations contained in Paragraph 103 of the
28 Complaint as they apply to itself. Defendant lacks sufficient knowledge or

1 information concerning the remaining allegations contained in said paragraph, and
 2 on that basis generally and specifically denies each and every such allegation.

3 104. Defendant denies the allegations contained in Paragraph 104 of the
 4 Complaint as they apply to itself. Defendant lacks sufficient knowledge or
 5 information concerning the remaining allegations contained in said paragraph, and
 6 on that basis generally and specifically denies each and every such allegation.

7 **AFFIRMATIVE DEFENSES**

8 **FIRST AFFIRMATIVE DEFENSE**

9 **(Failure to State a Claim or Cause of Action)**

10 105. Defendant is informed and believes, and thereon alleges, that each of
 11 the purported causes of action in the Complaint fails to state a claim or cause of
 12 action against Defendant.

13 **SECOND AFFIRMATIVE DEFENSE**

14 **(Failure to Mitigate Damages)**

15 106. Upon information and belief, Plaintiff has failed to mitigate damages, if
 16 any, and to the extent of such failure to mitigate, any damages awarded to him
 17 should be reduced accordingly.

18 **THIRD AFFIRMATIVE DEFENSE**

19 **(Waiver)**

20 107. Upon information and belief, the Complaint is barred in whole or in part
 21 by the equitable doctrine of waiver.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 **(Estoppel)**

24 108. Upon information and belief, the Complaint is barred in whole or in part
 25 by the equitable doctrine of estoppel.

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FIFTH AFFIRMATIVE DEFENSE**(Laches)**

109. Upon information and belief, the Complaint is barred in whole or in part by the equitable doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE**(Unclean Hands)**

110. Upon information and belief, Defendant alleges that the acts of Plaintiff is guilty of unclean hands, and by reason thereof is not entitled to any equitable aid from this Court.

SEVENTH AFFIRMATIVE DEFENSE**(Lack of Damages)**

111. Upon information and belief, Plaintiff has not suffered any damages as a result of any actions taken by Defendant or its agents, and is thus barred from asserting any cause of action against Defendant.

EIGHTH AFFIRMATIVE DEFENSE**(Statute of Limitations)**

112. Upon information and belief, the Complaint is barred by the applicable statutes of limitation.

NINTH AFFIRMATIVE DEFENSE**(Offset)**

113. Upon information and belief, Defendant alleges that if it, wholly and/or separately, should be found in any manner legally responsible for damages, if any, purportedly sustained by Plaintiff, then such damages should be offset by the amount owing from Plaintiff to Defendant.

TENTH AFFIRMATIVE DEFENSE**(Unjust Enrichment)**

114. Upon information and belief, the Complaint is barred in whole or in part because any recovery which Plaintiff may take by the Complaint constitutes unjust

1 enrichment.

2 **ELEVENTH AFFIRMATIVE DEFENSE**

3 **(Apportionment of Liability)**

4 115. Upon information and belief, if Defendant should be found in any
5 manner legally responsible for damages purportedly sustained by Plaintiff, then such
6 damages were proximately caused or contributed by her (or some other persons or
7 entities not presently parties to this action), and it is necessary that the proportionate
8 degree of fault of each and every person or entity, whether made parties to this action
9 or not, be determined and prorated and that any judgment that might be entered
10 against Defendant be reduced by that degree of fault found to exist as to said other
11 persons or entities.

12 **TWELFTH AFFIRMATIVE DEFENSE**

13 **(Consent)**

14 116. Upon information and belief, Plaintiff consented to all of the acts and/or
15 conduct of the Defendants and/or Defendants' agents.

16 **THIRTEENTH AFFIRMATIVE DEFENSE**

17 **(Bona Fide Encumbrancer for Value)**

18 117. Defendant is informed and believes, and thereon alleges, that it is a
19 bona fide encumbrancer for value with respect to the Deed of Trust recorded on or
20 about October 23, 2006 in the Santa Clara County Recorder's Office as documents
21 number 19151661, which encumbers the real property located at 680 Clara Vista
22 Avenue, San Jose, California 95050.

23 **FOURTEENTH AFFIRMATIVE DEFENSE**

24 **(Uncertain, Ambiguous, and Unintelligible Complaint)**

25 118. Defendant is informed and believes, and thereon alleges, that the
26 Complaint is uncertain, ambiguous and unintelligible in that Plaintiff did not
27 consistently define the terms employed in the Complaint with respect to various
28 parties and properties, and is otherwise unintelligible.

FIFTEENTH AFFIRMATIVE DEFENSE**(Failure to Name Indispensable Parties)**

119. Defendant is informed and believes, and thereon alleges, that Plaintiff failed to join all indispensable parties as defendants to the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE**(Good Faith by Defendant)**

120. Defendant is informed and believes, and thereon alleges, that any conduct on the part of the Defendant, or representations made by the Defendant, were made in good faith.

SEVENTEENTH AFFIRMATIVE DEFENSE**(15 U.S.C. Section 1640(c))**

121. Defendant is informed and believes, and thereon alleges, that it is not subject to any liability for an alleged violation of the Truth in Lending Act since the alleged violation was unintentional and the result of bona fide error, regardless of the maintenance of procedures to avoid such alleged error.

EIGHTEENTH AFFIRMATIVE DEFENSE**(15 U.S.C. Section 1640(f))**

122. Defendant is informed and believes, and thereon alleges, that is not subject to any liability for an alleged violation that results from an act done in good faith with the Truth in Lending Act.

NINETEENTH AFFIRMATIVE DEFENSE**(Ratification)**

123. Defendant is informed and believes, and thereon alleges, that Plaintiff, by virtue of his own acts and/or the acts or omissions of others chargeable to him, ratified the alleged acts of the Defendant.

TWENTIETH AFFIRMATIVE DEFENSE**(Failure to Properly Seek Rescission Prior to Filing Complaint)**

124. Defendant is informed and believes, and thereon alleges, that Plaintiff is

1 barred from recovery because he, by virtue of his own acts and/or the acts or
 2 omissions of others chargeable to him, failed to properly seek rescission prior to
 3 instituting the within action.

4 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

5 **(No Basis for Rescission)**

6 125. Defendant is informed and believes, and thereon alleges, that the
 7 Complaint fails to state facts sufficient to warrant rescission.

8 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

9 **(Failure to Properly Tender Property Received 10 from Lender Prior to Filing Complaint)**

11 126. Defendant is informed and believes, and thereon alleges, that Plaintiff is
 12 barred from recovery because he, by virtue of his own acts and/or the acts or
 13 omissions of others chargeable to him, failed to tender the property he received from
 14 the Defendant in connection with the events, transactions and occurrences forming
 15 the basis for her allegations in the Complaint prior to instituting the within action.

16 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

17 **(Inability to Tender Property Received from Lender)**

18 127. Defendant is informed and believes, and thereon alleges, that Plaintiff is
 19 barred from recovery because he, by virtue of his own acts and/or the acts or
 20 omissions of others chargeable to him, is unable to tender the property he received
 21 from the Defendant in connection with the events, transactions and occurrences
 22 forming the basis for her allegations in the Complaint.

23 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

24 **(Full and Complete Disclosures of All Material and Appropriate Facts)**

25 128. Defendant is informed and believes, and thereon alleges, that it has fully
 26 and completely disclosed all material and appropriate facts in connection with the
 27 events, transactions and occurrences, as alleged in the Complaint.

28 ///

TWENTY-FIFTH AFFIRMATIVE DEFENSE**(Due Process)**

129. Defendant is informed and believes, and thereon alleges that Plaintiff claims under California Business & Professions Code § 17200 violate due process under the United States Constitution.

TWENTY-SIXTH AFFIRMATIVE DEFENSE**(Punitive Damages)**

130. The Complaint fails to state facts sufficient to constitute oppression, malice or despicable conduct warranting a punitive damage award and an award of punitive damages is unconstitutional as it violates the due process clause of the Fourteenth Amendment of the United States Constitution.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE**(Damages Claimed Attributable to Unknown Parties)**

131. Defendant is informed and believes, and thereon alleges, that if Defendant is subjected to any liability to Plaintiff herein, it will be due in whole and/or in part to the conduct, acts, omissions and/or activities of a party and/or parties unknown to Defendant at this time, and any recovery obtained by him should be barred and/or reduced according to law, up to and including the whole thereof.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE**(Intervening and Superseding Cause)**

132. Defendant is informed and believes, and thereon alleges, that the injuries and damages of which Plaintiff complains, if any, were proximately caused and contributed to by the acts, omissions or breaches of other defendants, cross-defendants, persons and entities, and said acts, omissions or breaches were intervening and superseding causes of injuries and damages, if any, of which he complains, thus barring her from any recovery from this Defendant.

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TWENTY-NINTH AFFIRMATIVE DEFENSE

(Lack of Proximate Cause)

133. Defendant is informed and believes, and thereon alleges, that any alleged conduct or omission by Defendant was not the cause in fact, or proximate cause, of any injuries or damages alleged by Plaintiff.

THIRTIETH AFFIRMATIVE DEFENSE

(Right to Add Additional Affirmative Defenses)

134. Defendant is informed and believes, and thereon alleges, that it cannot fully anticipate all affirmative defenses that may be applicable to the within action. Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby reserved.

WHEREFORE, Defendant prays for relief as follows:

A. That the Complaint be dismissed, with prejudice;

B. That Plaintiff takes nothing from the Defendant by way of the Complaint;

C. That Defendants recover the costs of suit, including recovery of attorneys' fees; and

D. For such other and further relief as this Court deems just and proper.

DATED: November 29, 2007

WOLFE & WYMAN LLP

By:

ERIC M. SCHIFFER
ERIC T. LAMHOFFER

Attorneys for Defendant
IMPAC FUNDING CORPORATION

ELECTRONIC PROOF OF SERVICE
CONCETTI v. IMPAC FUNDING CORPORATION, et al.
Case No. C07 05410 JW

I, Kathy Hagmaier, declare:

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 5 Park Plaza, Suite 1100, Irvine, California 92614-5979. On November 29, 2007, I served the document(s) described as **ANSWER OF DEFENDANT IMPAC FUNDING CORPORATION TO COMPLAINT OF DOMINIC CONCETTI** as follows:


JESSICA L. FRY, ESQ.
jessicaf@lawfoundation.org
KERSTIN ARUSHA, ESQ.
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LAW FOUNDATION OF SILICON VALLEY
111 West Saint John Street, Suite 315
San Jose, CA 95113

Attorneys for Plaintiff
DOMINIC CONCETTI

☒ **BY ELECTRONIC ACCESS** Pursuant to Electronic Filing Court Order, I hereby certify that the above document(s) was uploaded to the CONCETTI v. IMPAC FUNDING CORPORATION website and will be posted on the website by the close of the next business day and the webmaster will give e-mail notification to all parties.

☒ **FEDERAL** I declare that I am employed in the offices of a member of the State Bar of this Court at whose direction the service was made.

Executed on November 29, 2007, at Irvine, California.


Kathy Hagmaier